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Article 10

Negligence: Invitor and Invitee

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court held in this case that the plaintiff was in the class of a "frequenter" and therefore the defendent owed her the duty of safe maintenance imposed upon it by 101.06. Needless to say a hallway that is so improperly lighted that a person cannot see a stairway at the end of it is not being maintained in a safe condition. So defendant's first contention is disposed of to his disadvantage.

We now consider the question of plaintiffs' contributory negligence. The court did not waste any time in disposing of this contention. It followed the rule that it had previously laid down in 201 N. W. 250, providing flatly that proceeding down an unlighted starway in a public building does not constitute contributory negligence, but merely an assumption of risk that is not a defense. It follows therefore that proceeding down a dimly lighted hall does not constitute contributory negligence.

Defendant further contended that the doctrine of *respondeat superior* does not apply where, as here, the 'superior' is a charitable organization. Under the general law of the land, defendant"s contention is correct. Innumerable cases hold that a religious corporation is a charitable organization, 125 N. E. 13; 123 N. E. 289; 209 S. W. 104; 264 Penn., 77. The courts also agree that a charitable organization is not liable for personal injuries caused by the negligence of its servants or agents, 119 N. E. 686; 191 N. W. 751 Wis. 178; and 88 S. E. 649 holds that the rule excepting charitable institutions from liability for torts of their agents or servants is an exception to the rule of *respondent superior.* So far the general law favors the defendant, but again the court applies the "Safe Statute" to completely blast his arguments. The court points out that 101.01 (12) and 101.06 (supra) apply to *all* public buildings alike, be they owned by charitable organizations or not; and the former as well as the latter must maintain their public buildings in a safe condition or respond in damages to those injured due to the organization's failure to so maintain them.

Thus the Wisconsin "Safe Statute" imposes upon charitable organizations an obligation which they never before had—that of the safe maintenance of their public buildings.

FRED J. GRAHAM.

Negligence:

Plaintiff, while in the act of leaving defendant's store after making a few purchases, slipped and fell in one of the aisles and broke her arm. Plaintiff seeks recovery on the mere relationship of invitor and invitee, alleging negligence on the part of the invitor or his employees solely on the existence of the alleged spot on the floor. HELD.—The store owner is merely under the duty of exercising reasonable care to keep the store in safe condition for the customers. *F. W. Woolworth Co.* v. *Williams,* 41 Fed. Rep. 970.

The defendant is not liable unless negligence is presumed from the attending facts and circumstances or proven.

Under the doctrine of *res ipsa loquitur,* which permits an inference of negligence from the mere proof of an injury or accident, where it appears that the injury or accident would not or could not have happened except for the negligent conduct of the defendant, the plaintiff makes a case for the jury by proof of the accident or injury. *Rost* v. *Roberts* 180 Wis. 207 192 N. W. 38). The mere fact that the plaintiff was injured while lawfully on the premises of the defendant does not raise a presumption of negligence on the part of the latter. *Stearns* v. *Ontario Spinning Co.* 184 Pa. 519 39 A. 292 39 L. R. A. 842 63 Am. St. Rep. 807, *Huey* v. *Gahlenbeck* 121 Pa. 238 15 A. 5520 6 Am. St. Rep. 790, *Spickernagle* v. *Woolworth* 236 Pa. 496 84 A. 909 Ann. Cas. 1914A 132, *Diver* v. *Singer Mfg. Co.* 205 Pa. 170 54 A. 718). The burden therefore rested on the plaintiff to show some specific act of negligence. It must appear that the condition which produced the fall had either been in fact brought to the previous notice of the defendant, or failing in proof of said actual notice, that the condition had existed for such a space of time as would have afforded the defendant sufficient opportunity to make proper inspection as to the safety of the place. (*Rom* v. *Huber* reported in 94 N. J. Law. 258 109 A. 504, affirming the same case in 93 N. J. Law. 360 108 A. 361). in the case under review there is no evidence to show that the spot was placed on the floor by the defendant or any of its servants, or that the defendant or his servants knew of its presence. Hence the doctrine of *res ipsa loquitur* is not applicable, and the negligence of the defendant cannot be presumed from the attending facts or circumstances.

A customer who enters a store for the purpose of trade occupies the status of an invitee, and in this connection it is not necessary that the person entering should have a definite purpose of making any particular purchase, but it is sufficient that he enters to look around with the purpose of buying anything which he may see which strikes his fancy or with a view of dealing with the store at some other time. (45 C. J. 816-17 PP 223, *Kaufman Dep. Stores Inc.* v. *Cranston* 258 Fed. 917 169 CCA 637, *Kresge Co.* v. *Fader* 116 St. 718 158 N. E. 174, *Spahn* v. *F. W. Woolworth Co.* 22 Pa. Dist, 874). The relationship then that existed between plaintiff and defendant was that of invitee and invitor. While the owner, occupant, or person in charge of the property is not an insurer of the safety of the licencee thereon, he owes to the invitee the duty of a reasonable or ordinary care for his safety (*Ten Broeck* v. *Wells* 47 Fed. 690, *Campbell* v. *Sutliff* 193 Wis. 370 N. W. 374). What is more the invitor owes to the invitee the duty of keeping the premises in a reasonably safe and suitable condition, so that the invitee shall not be unnecessarily or unreason-

ably exposed to danger. (*Sweeny* v. *Colony etc. R. Co.,* 10 Allen (Mass.) 368 87 Am. D. 664, *Morgan* v. *Budlong,* 162 Wis. 578 156 N. W. 958). The plaintiff then has the duty to prove that the defendant was guilty of ordinary negligence, in order to recover. The plaintiff relied entirely on the existence of the spot on the floor. It is not sufficient for plaintiff to show the oil was there; she must go further, and show its presence under circumstances sufficient to charge defendant with responsibility therefor (*Mond* v. *Erion* 223 App. Div. 526 228 N. Y. S. 533 35). Hence the plaintiff can not recover. The court has again gone on record to the effect that the defendant is not an insurer against accident to persons entering its store for the purpose of making purchases or otherwise.

CHARLES RIEDL

Rights of Adjoining Landowners.

Schaefer v. *Hoffman,* 198 Wis. 233, was an action to recover damages caused by the collapse of plaintiff's garage, due to excavation on an adjoining lot owned by the defendant. Both parties were informed on their rights and duties as adjoining landowners, and accordingly, the defendant gave plaintiff notice of his intention to excavate, and plaintiff thereupon employed one Stoltz, a contractor, to protect his building. Defendant contractor assured plaintiff that there was no need to worry, and that he would care for plaintiff's interest excavation, and as a result was not on hand to protect plaintiff's if anything should happen. Stoltz was out of the city at the time of building. Defendant's contractor, also defendant in this case, started excavation, and in the course of the work, dug below the bottom of plaintib's foundation causing the garage to collapse. The court below changed the jury's answer to the special verdict to read that the defendant contractor was not guilty of want of ordinary care in excavating. Upon appeal by the plaintiff the supreme court held that plaintiff could not recover.

The party excavating is legally bound to protect the adjoining lot in its natural condition from damages resulting from removal of lateral support. This is an absolute duty (*Hickman* v. *Wellauer,* 169-Wis. 18), and is a duty that defendant cannot delegate, since defendant cannot avoid liability for failure to so protect land in its natural condition by entering into a contract with an independent contractor for performance of work (*Wahl* v. *Kelly,* 94 Wis. 539.)

However, where the adjoining land is burdened with the weight of an artificial structure, such additional weight of an artificial structure, such additional weight must be cared for by the owner of the land on which the structure is located, provided the adjoining owner gives timely notice of his intention to excavate. Thus in *Schaffer* v. *Hoff-*